

**EVALUATION FINDINGS**  
**FOR THE**  
**RHODE ISLAND COASTAL RESOURCES MANAGEMENT**  
**PROGRAM**

**MAY 2000 THROUGH MAY 2003**

**November 2003**

Office of Ocean and Coastal Resource Management  
National Ocean Service  
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## **EXECUTIVE SUMMARY**

### **A. OVERVIEW**

Section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA), requires NOAA's Office of Ocean and Coastal Resource Management (OCRM) to conduct periodic evaluations of the performance of states and territories with federally-approved coastal management programs. This review examined the operation and management of the Rhode Island Coastal Resources Management Program (CRMP) by the Coastal Resources Management Council (CRMC), the designated lead agency, during the period of May 2000 through May 2003.

It is the conclusion of this evaluation that the CRMC is successfully implementing and enforcing its federally-approved coastal management program. This document contains six recommendations that take the form of Necessary Actions that are mandatory and must be completed by the identified deadline, and three Program Suggestions that denote actions OCRM believes the State should take to improve the program, but which are not mandatory at this time.

### **B. SUMMARY OF ACCOMPLISHMENTS**

The evaluation team documented a number of areas where the CRMC improved the management of Rhode Island's coastal resources. These include:

1. **Leadership and Staff Support for the Coastal Resources Management Council**
2. **Coordination and Cooperation**
3. **Ongoing Leadership in Statewide Dredging and Disposal Planning**
4. **Efforts and Success in Aquaculture**
5. **Continued Progress in Special Area Management Planning**
6. **Development of CRMC Web Site**
7. **Continuation of Coastal Habitat Restoration Program**
8. **Delineation of Mean High Water/Wetland Boundaries**

### **C. SUMMARY OF RECOMMENDATIONS**

In addition to the accomplishments discussed above, the evaluation team has identified areas where the program could be strengthened or improved. These include:

1. **Critical CRMC Staffing Needs**

**NECESSARY ACTION:** The CRMC must work with the State Legislature to justify, secure, and fund a career civil service public outreach and education position. This should be completed during the 2004 State legislative session.

**NECESSARY ACTION:** The process to formalize the deputy director and coastal policy analyst positions must be completed and the positions both be made permanent state FTEs (full time equivalent) within the CRMC. This should be completed within one year of the date of this final evaluation findings document.

2. **CRMC'S Management Procedures**

**NECESSARY ACTION:** Development of Council meeting agendas and conduct of Council meetings must follow adopted Council procedures as articulated in the "CRMC Management Procedures." This pertains to the public comment process, the order that the Council hears applications, and other relevant issues. The CRMC Management Procedures must address the order in which the Council hears applications. Within six months of the date of the Final Evaluation Findings CRMC must review the "CRMC Management Procedures" and provide to NOAA a summary of proposed changes needed to meet the intent of this Necessary Action. The CRMC should consult with NOAA before making final changes to the Management Procedures.

3. **Implementation of Coastal Buffer Zone Program and Regulations**

**NECESSARY ACTION:** Complete applications (including staff reports) for CRMC assents for projects that include coastal buffers must be submitted to the OCRM Coastal Programs Division at the same time they are sent to Council members before each meeting. When the Council issues assents for the projects, the assents themselves or other publicly available documentation should indicate the rationale for specific conditions and actions. The rationale must conform to the CRMC's regulations regarding issuance of variances. CRMC's cooperative agreement semi-annual performance reports on permit activity that are submitted to NOAA must summarize the number of assent applications involving buffer issues and how many of those assents were issued with conditions different than those recommended by staff. It is also suggested that the Council discuss whether it is satisfied with its current vegetated buffer policies and regulations, or whether it wishes to reconsider them.

**NECESSARY ACTION:** In conjunction with the NECESSARY ACTION under "Section 2. CRMC'S MANAGEMENT PROCEDURES," the Council's "Management Procedures" should be revised to provide clarity for the public and guidance to Council by specifying the role of staff recommendations in the Council's decision-making process.

**PROGRAM SUGGESTION:** To the extent that staff time is available and working with URI Sea Grant and/or other local experts, Council staff should conduct "training" sessions with individual or small (2-3) groups of Council members to familiarize or refresh them with the regulations that apply to assent applications. The length and content should be devised by staff, but these training sessions should be longer and more detailed than a

briefing session. NOAA will assist with this initiative by identifying outside experts or providing other support as necessary.

4. **Implementation of Submerged Aquatic Vegetation Policies and Regulations**

**PROGRAM SUGGESTION:** The CRMC should reconvene the subgroup on submerged aquatic vegetation/eelgrass. The subgroup should recommend appropriate policy changes, taking into account the previous work of the subgroup and recommendations made by “Save the Bay.” In addition, the CRMC’s cooperative agreement semi-annual performance reports on permit activity must summarize the number of assent applications involving submerged aquatic vegetation issues, how many included staff recommendations to address the issue, and how many of those assents were issued with conditions different than those recommended by staff.

5. **Submerged Lands Leasing Program**

**PROGRAM SUGGESTION:** The CRMC should work with the Rhode Island Legislature to establish a dedicated account for monies collected through the leasing of submerged lands (as well as other permitting fees), and should then develop regulations, a fee structure, and an implementation plan to address submerged lands leases. The CRMC should also consider its staffing need for the development and implementation of a submerged lands leasing program. NOAA will provide examples of lease programs in other coastal states, as requested.

6. **Cooperative Agreement/Grant Reporting**

**NECESSARY ACTION:** The CRMC must submit all overdue performance reports within six months of the date of these final evaluation findings. All performance reports, both those currently overdue and future reports, must include summary reports of programmatic progress being made to meet coastal management objectives through the use of state matching funds. Beginning with the first performance report due following the date of issuance of these final evaluation findings, reports must be submitted by the deadlines specified in the performance reporting guidelines attachment provided with each cooperative agreement award or provided by OCRM staff.

## I. INTRODUCTION

Section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA), requires NOAA's Office of Ocean and Coastal Resource Management (OCRM) to conduct a continuing review of the performance of states and territories with federally-approved coastal management programs. This document sets forth the evaluation findings of the Director of OCRM with respect to operation and management of the Rhode Island Coastal Resources Management Program (CRMP) for the period from May 2000 through May 2003. It contains an executive summary of the review findings, a description of the review procedures, a description of the program, major accomplishments during the review period, evaluation findings and recommendations, a conclusion, and appendices.

The recommendations made by this evaluation appear in **bold** type and follow the section of the findings in which the facts relevant to the recommendation are discussed. The recommendations may be of two types:

**Necessary Actions** address programmatic requirements of the CZMA's implementing regulations and of the Rhode Island CRMP approved by NOAA, and must be carried out by the date(s) specified;

**Program Suggestions** denote actions that OCRM believes would improve the program, but which are not mandatory at this time. If no dates are indicated, the State is expected to have considered these Program Suggestions by the time of the next CZMA §312 evaluation.

Failure to address Necessary Actions may result in a future finding of non-adherence and the invoking of interim sanctions, as specified in CZMA §312(c). Program Suggestions that must be reiterated in consecutive evaluations to address continuing problems may be elevated to Necessary Actions. The findings in this evaluation document will be considered by NOAA in making future financial award decisions relative to the Rhode Island Coastal Resources Management Program.

## **II. REVIEW PROCEDURES**

### **A. OVERVIEW**

The Office of Ocean and Coastal Resource Management (OCRM) evaluation staff began its review of the Rhode Island CRMP in February 2003. The §312 evaluation process involves four distinct components:

- An initial document review and identification of specific issues of concern;
- A site visit to Rhode Island, including interviews and a public meeting;
- Development of draft evaluation findings; and
- Preparation of the final evaluation findings, partly based on comments from the state regarding the content and timetables of necessary actions specified in the draft document.

### **B. DOCUMENT REVIEW AND ISSUE DEVELOPMENT**

The evaluation team reviewed a wide variety of documents prior to the site visit, including: the federally approved program document; approval findings; subsequent changes to the program; federal assistance awards; performance reports and work products; official correspondence between the program and OCRM; previous §312 evaluation findings; and other relevant information.

Based on this review and on discussions with the OCRM Coastal Programs Division (CPD) staff, the evaluation team identified the following priority issues:

- The manner in which the state has addressed the recommendations contained in the previous (September 2000) Evaluation Findings;
- Program accomplishments, including changes to the core statutory and regulatory provisions of the CRMP;
- The effectiveness of the State in implementing, monitoring, and enforcing the core authorities that form the legal basis for the CRMP;
- Implementation of the Federal and State consistency process;
- The effectiveness of local technical assistance programs in assisting coastal communities through the comprehensive plan review process, Special Area

Management Plans, and other available mechanisms to forward the goals of the CRMP;

- The adequacy of staffing levels necessary to comply with additional State-mandated responsibilities assumed by the CRMP (a necessary action of the previous evaluation);
- Effectiveness of intergovernmental and non-governmental cooperation in the State and region in protecting and restoring coastal wetland and submerged aquatic vegetated habitats, and moving towards watershed management;
- Outreach and education efforts, as well as opportunities for public participation in the coastal management planning and decision-making process; and
- The Council's decision-making process, relative to staff recommendations, particularly in areas in which NOAA OCRM has previously expressed concerns.

### **C. SITE VISIT TO RHODE ISLAND**

Notification of the scheduled evaluation was sent to the Executive Director of the Coastal Resources Management Council (CRMC) as the lead agency, relevant federal agencies, and the Rhode Island congressional delegation. The CRMC published notification of the evaluation and scheduled public meeting. In addition, a notice of NOAA's "Intent to Evaluate" was published in the *Federal Register* on March 21, 2003.

The site visit to Rhode Island was conducted from May 19 - 22, 2003.. The evaluation team consisted of L. Christine McCay, Evaluation Team Leader, OCRM National Policy and Evaluation Division; Josh Lott, Program Specialist, OCRM Coastal Programs Division; and David Mackey, Program Manager, Ohio Coastal Management Program.

During the site visit, the evaluation team met with: The CRMC's executive director and staff, CRMC chairman and general counsel, state legislators, representatives of federal, other state, and local governmental agencies, academicians, and interest group members involved with or affected by the CRMP. Appendix A contains a listing of individuals contacted during this review.

As required by the CZMA, a public meeting was held on Wednesday, May 21, 2003, at 7:00 p.m. in Conference Room B, William A. Powers Building, Department of Administration, One Capitol Hill, Providence, Rhode Island, where members of the general public were given the opportunity to express their opinions about the overall operation and management of the Rhode Island CRMP. Appendix B lists persons who attended the public meeting.

Written comments are also accepted. No written comments were received in response to the evaluation.



The CRMC staff were crucial in setting up meetings and arranging logistics for the evaluation site visit. Their support is gratefully acknowledged.

### **III. COASTAL PROGRAM DESCRIPTION**

The Rhode Island Coastal Resources Management Program (CRMP) was approved by the Department of Commerce in 1978, following enactment of state coastal zone legislation in 1971 and subsequent program development. The Coastal Resources Management Council (CRMC or Council) is designated as the state's lead agency for coastal management, and since 1992 has been the direct recipient of CZMA financial assistance awards. Other state agencies, such as the Rhode Island Department of Environmental Management (RIDEM), the Office of Administration Division of Planning, the University of Rhode Island Coastal Resources Center (CRC), and the Historic Preservation Commission cooperate with the CRMC in various aspects of coastal management. Rhode Island's 21 coastal municipalities also participate in the coastal management process through planning, zoning, and permitting.

As created by the State Legislature, the CRMC is an autonomous agency not under the direct purview of the Executive Branch. The Council, composed of 16 members, operates with an Executive Director and staff of approximately 25. Members are appointed by the Governor, Lieutenant Governor, and the Speaker of the House for terms of three years and cannot serve more than two consecutive terms. Council members include: two members of the State House of Representatives, two members of the State Senate, two representatives of coastal communities of varying size, four appointed or elected officials from local government, five representatives from the general public, and one ex officio member, the Director of RIDEM. Others may be invited to serve in a non-voting, advisory capacity as needs warrant. In addition, during contested cases when involved coastal cities and towns are not represented on the Council, a Council member for that community is appointed to hear that particular case.

The CRMC is empowered with planning, policy, permitting, enforcement, and coordination responsibilities for uses affecting the coastal zone. The CRMC also implements provisions of the Federal consistency process. Permits or "assents" issued by the CRMC fall within three categories: (1) FONSI (finding of no significant impact) direct assents for certain types of projects having a "de minimus" effect on the environment; (2) Category A assents pertaining to generally routine activities, construction, and maintenance; and (3) Category B assents, which apply to more substantive activities and alterations or to coastal areas requiring additional levels of protection. Category A assents are issued by the CRMC Executive Director for approved applications within 30 working days, and abutting property owners are given notice of an application. Some project types go to public notice. Applications do not need full Council review if they meet specified criteria. All Category B applications require a public notice and must undergo review by the full Council. Should there be an objection to the application, the proposal goes to public hearing. The full Council makes determinations on assents and on other matters referred to it by subcommittees or staff at meetings held twice each month. Standing subcommittees of the CRMC include Rights of Way, Urban Ports and Harbors, Docks, Dredging, Aquaculture, and Planning and Procedure.

Under the CRMP, permitted activities are subject to specific definitions, policies, prohibitions, and standards that are based on the water type and the nature of the adjacent shoreline feature. The six water types include: Conservation Areas (Type 1), Low Intensity Use (Type 2), High Intensity Boating (Type 3), Multipurpose Waters (Type 4), Commercial and Recreational Harbors (Type 5), and Industrial Waterfronts and Commercial Navigation Channels (Type 6). The CRMC defines shoreline features as: Salt Ponds; Coastal Beaches and Dunes; Barrier Beaches; Coastal Wetlands; Coastal Cliff, Bluffs, and Banks; Rocky Shores; and Manmade Shorelines.

The CRMC's jurisdiction comprises all tidal waters out to three miles. The determination of the inland jurisdiction is based on three factors: (1) the coastal features or shoreline type; (2) the type of activity and where this activity occurs; and (3) whether the activity is located in the watershed of a poorly flushed estuary, areas covered by the CRMC's special area management plans (SAMPs). In general the CRMC requires permits for all activities that occur within 200 feet of any coastal feature. Within a SAMP boundary, the CRMC also requires permits for any subdivision of six or more units, as well as any activity which requires more than one acre of parking. The CRMC also requires permits for certain inland activities regardless of location. These activities include: solid waste disposal facilities; minerals extractions; chemical transfer, processing, and storage facilities; petroleum transfer, processing, and storage facilities; and all sewage treatment and disposal facilities.

State law requires the CRMP to be consistent "where possible" with the Rhode Island State Guide Plan, which directs the physical, economic, and social development of the State. Every community must prepare a local comprehensive plan that is consistent with the State Guide Plan. The Plan is administered by the Department of Administration Division of Planning; however the CRMC has been delegated the primary responsibility for developing planning elements of the State Guide Plan for the coastal zone.

## **IV. ACCOMPLISHMENTS**

### **1. LEADERSHIP AND STAFF SUPPORT FOR THE COASTAL RESOURCES MANAGEMENT COUNCIL**

As noted in the previous “Final Evaluation Findings for the Rhode Island Coastal Resources Management Program” dated September 2000, executive leadership, on the part of the executive director and the deputy director, and staff support for the Coastal Resources Management Council (CRMC or Council) was highlighted as a significant accomplishment of the program. This hallmark of outstanding management and administration has continued throughout the period of this current evaluation. The director and a staff of 27 have faced the challenges of state and program budgetary difficulties and have still provided policy leadership; responsiveness to the regulated public, concerned citizens, and new issues; flexibility in addressing a variety of concerns and issues; education and outreach opportunities; and have engaged in partnerships, coordination and cooperation to accomplish tasks without concern for what agency or group receives credit. As evidenced in the previous Evaluation Findings, the program took on several new initiatives or addressed new mandates; the accomplishments during this evaluation period primarily involve maintaining and sustaining the high quality and standards of work in light of significant financial challenges.

Throughout the course of this evaluation, CRMC staff were routinely described as knowledgeable, accessible, responsive, and willing to do whatever it takes to accomplish a task or address a concern. The CRMC is responsible for permitting almost all activities within a defined area of the coast or on coastal features or within directly associated contiguous areas, as well as certain inland activities anywhere in the state; the prerequisites, policies, and standards comprising the regulations governing alterations and activities under the Council’s jurisdiction are necessarily complex. Yet everyone who discussed the regulatory activities of the Council with the evaluation team complimented the CRMC staff on their technical knowledge, skill, integrity. Staff shows a willingness and ability to explain and clarify the regulations and to provide science-based and reasonable recommendations to the Council on permit applications. In short, they are committed to “making the system work.” For example, officials from the City of Warwick met with the evaluation team and indicated that the City greatly benefits from the staff knowledge and expertise in identifying boundaries as part of the enforcement of the Freshwater Wetlands Protection Act, in dealing with dredging issues that are an important issue for the city, and in the development of the Greenwich Bay Special Area Management Plan.

The staff is to be commended for making Council mechanisms for addressing issues and concerns very adaptable to change. As an example, the current deepening of the Providence River channel and adjacent private berths has recently brought to light a serious issue at several facilities. Many port berthing facilities are located in public trust areas and were constructed before the last significant dredging in the channel and harbor; the planned dredging will allow much larger ships to use berthing facilities than were originally designed for and accommodated. Whether the older sea walls and other structural units of a facility can withstand bumping and

other actions from mooring of larger, deep-draft vessels is unknown but questionable; age-related deterioration as well as new damage is generally not visible above water. The port area is upstream of an active spawning area for winter flounder and failure of a structure could significantly affect ecological and navigational resources as well as pose a serious threat to public safety and the economic viability of the facility. The CRMC's permit program does allow some analysis of the impacts of the new dredging upon the structures. However, during the course of the evaluation site visit, the Council staff recommended to the Council's Planning and Procedures Subcommittee that the Council revise its policies to require a periodic "fitness of purpose" analysis. Such an analysis would address age-related deterioration as well as uses not originally planned for. As the purpose for which these facilities is being modified (accommodating larger vessels than initially intended), the staff has quickly reacted by conducting a "fitness of purpose" analysis of its own and proposing adaptive changes. This is only one example of how the CRMC staff can identify an emerging issue and propose quick action to address it.

The Executive Director's leadership provides staff with the ability to work within a cooperative or partnership setting. This leadership needs to be recognized, as it has in the past. The CRMC staff have key leadership roles in the state's aquaculture initiative and in dredging and dredged material disposal planning. The CRMC also successfully addresses its mandate to lead the state's efforts to expand and maintain public access to the coast. Despite severe funding constraints, its Rights of Way Program continues to identify and designate public rights of way to the shore. CRMC staff works with local governments to post signs at and maintain these public rights of way.

## **2. COORDINATION AND COOPERATION**

State and federal agencies who met with the evaluation team were positive in their assessments of the ability of CRMC staff to work across agencies and collaborate on ways to address issues. These range from Special Area Management Planning, direct assistance to individual local governments, and larger issues such as dredging and dredged material disposal. For example, marina expansion includes issues that affect the state's shell fishermen and the marine trade industry members in different ways. During this evaluation representatives of the two groups praised the CRMC staff for their willingness to work with both groups as well as with the other major regulatory player, the Department of Environmental Management (DEM), to make progress in dealing with these issues. They highlighted a controversial marina expansion in the City of Warwick where the CRMC staff developed an innovative solution involving habitat restoration and relocation of shellfish resources. Marina expansion also directly affects local governments and their citizens, so local governments have turned to the CRMC staff for assistance in addressing their concerns surrounding expansion. The City of Warwick recognized that problems occur when marina projects are not reviewed cumulatively within the larger context of Greenwich Bay and the parts of Narragansett Bay bordering Warwick. During this evaluation, local governments indicated they turned to the CRMC staff for assistance with watershed management, dredging, and freshwater wetland protection

boundary delineation issues, because local officials recognize the technical expertise and public education expertise of the CRMC. Thanks to the quick and responsive action by the Council's Executive Director, the CRMC was able to obtain NOAA funding for the development of a Greenwich Bay SAMP, which is highlighted in a separate Accomplishment item below.

### **3. ONGOING LEADERSHIP IN STATEWIDE DREDGING AND DISPOSAL PLANNING**

The Rhode Island Marine Infrastructure Maintenance Act was enacted in 1996. It designated the CRMC as the lead agency for dredging and dredged material disposal issues in the state and called for the development and implementation of a state dredging policy, regulatory framework, and statewide dredging and disposal plan. The CRMC's effective involvement and leadership efforts in the issues and activities during the years immediately following enactment of the law was discussed in the September 2000 Final Evaluation Findings for the Rhode Island Coastal Resources Management Program. During the period of this current evaluation, several developments have occurred. Most significantly, the CRMC has hired a licensed professional civil engineer who serves as the full-time dredging coordinator, as NOAA required in the 2000 Evaluation Findings. This has proven to be a wise and effective move, providing a single knowledgeable contact to work with federal and state agencies and various stakeholder and citizen groups.

At the time of this evaluation, the CRMC has drafted an outline of a state dredging and disposal plan and its contents. The purpose of the draft is to have a list of "consultant tasks" ready when the program is funded. Although the dredging and disposal plan program is requested each year for capital project funding, no state funding has been approved to write and implement the plan. Nevertheless, there has been significant progress during this evaluation period. Maintenance dredging of the Providence River channel and harbor has been initiated for the first time in over 25 years. The Governor and the Army Corps of Engineers (ACOE) signed a Project Cooperation Agreement for the Providence River and Harbor Dredging Project on December 18, 2002. Dredging began on April 11, 2003 at the Rumstick Neck reach of the channel near the Town of Barrington. The CRMC is the non-federal project sponsor for the channel and harbor dredging and was the lead state agency responsible for coordinating the Army Corps of Engineers' efforts to complete a final environmental impact statement (FEIS). The FEIS was completed in the spring of 2002. The CRMC also held a workshop on alternative technologies for dredged material treatment as part of the education effort during the FEIS development. Education has been a significant need and effort during this evaluation period, both because no dredging has occurred in over 25 years, resulting in lack of experience and technical knowledge; and because rumors and unsubstantiated information about the effects of dredging and dredged material disposal needed to be addressed. The CRMC has addressed this education need with considerable staff effort. This effort could be enhanced by the CRMC having at its disposal additional resources dedicated to public education and outreach.

The most significant issue was and continues to be designation of disposal sites. The Governor is considering the designation of an upland disposal site at Quonset. Offshore disposal

is being accomplished at a site in Rhode Island Sound (designated as Site 69B). This same site, however, is under investigation for use as a long-term dredged material disposal site. Eight confined aquatic disposal (CAD) cells have been identified within the Fox Point reach of the channel in Providence Harbor for disposal of contaminated sediments from the federal navigation project (the Providence River Shipping Channel) and from several private marinas and port facilities. Three CAD cells have been completed to date. A fourth CAD cell will be completed in mid-October and will be set aside for non-federal applicants. Ultimately the CAD cells will be capped with clean sediment. Recently the CRMC has approached the Army Corps about allowing the Corps and CRMC to manage the capping program. The CRMC has proposed releasing the Corps contractor from its capping obligation; the CRMC and the Corps would then provide capping material through material dredged from marinas, thus providing for approximately 300,000 cubic yards of disposal space for the marinas. The Corps has responded positively to these suggested changes so far.

#### **4. EFFORTS AND SUCCESS IN AQUACULTURE**

Aquaculture in Rhode Island has been limited to shellfish, and even in 2002, a very “good” year, the farm gate value of the shellfish was only slightly over \$478,000 – in comparison to some other New England states whose farm gate value is almost \$200 million for both shell and fin fish. Although the CRMC does not use CZMA Section 309 funds to address aquaculture, it uses CZMA Section 306 monies to fund a full-time staff person who serves as the state’s aquaculture coordinator. In 2002, thanks to the efforts of Rhode Island Senator Jack Reed, the state received significant federal funding (\$1.5 million) to expand and develop the aquaculture industry in Rhode Island. The CRMC has signed a memorandum of understanding with Rhode Island Sea Grant, the University of Rhode Island, and Roger Williams University to manage the Rhode Island Reed Aquaculture Initiative – the CRMC aquaculture coordinator is the manager. The aquaculture coordinator is also the chair of the Aquaculture Initiative Executive Committee, comprised of state, university, industry, and other leaders, which was established to determine priorities for projects to be funded. Funds have been awarded for both multi-year research grants and “mini-grants” through a competitive process. One such three-year grant partners CRMC, academic interests, and commercial fishing interests to test the economic feasibility of “public benefit” aquaculture – a relatively common practice for replenishing natural shellfish resources in which towns operate small seasonal hatcheries to produce shellfish seed for planting in adjacent coastal waters.

Aquaculture is currently growing in Rhode Island at a 20% growth rate per year. It also has some the highest returns in dollar per acre of state. The Council is working jointly with the Economic Development Corporation to explore the highly lucrative aqua pharmaceutical field, which has great promise for the state.

With a relatively modest financial contribution from CZMA Section 306 monies each year (funding for the state aquaculture coordinator position), the CRMC has contributed its staff

talent, expertise, and knowledge and has provided leadership in the state's efforts to expand Rhode Island's aquaculture infrastructure and industry in an environmentally sustainable manner.

## **5. CONTINUED PROGRESS IN SPECIAL AREA MANAGEMENT PLANNING**

The CRMC has successfully used the special area management planning (SAMP) process for many years, and that progress continues. Four SAMPs have been adopted: Providence Harbor (1983); Salt Pond Region (1984); Narrow River (1986); and the interstate management plan for Pawcatuck River and Estuary (1992). The last three were developed as a result of local initiative. The plans were designed to address environmental impacts of land and water uses in these critical coastal areas. As noted in the last evaluation findings document, the Salt Pond Region and Narrow River SAMPs were significantly revised in 1999 to modify SAMP land and water use classifications, zoning regulations, and boundaries.

The Salt Pond and Narrow River SAMPs are not static, and as new issues emerge the CRMC continues to respond to them. Currently Council members and CRMC staff are working to address the issue of multi-family housing within the SAMP areas. Partly spurred by recent changes to Rhode Island's law mandating low and moderate-income housing in all of the state's municipalities, the CRMC and local governments within the SAMP areas are facing an influx of multi-family housing development proposals. In June 2003 after the evaluation site visit, the CRMC issued a public notice to consider changes to the SAMP rules that would have provided exceptions to the residential density criteria, a key element of the 1999 SAMP revisions necessary to reduce nitrate influx into the groundwater and surface waters. Based on public comments, the Council convened a working group and hosted a workshop facilitated by the URI's Coastal Institute to bring together affected parties and further study the issue, rather than hastily changing the long-standing SAMP regulations. At the time of this writing, this issue is still under debate. OCRM commends the CRMC for protecting the integrity of the SAMP regulations while seeking to address this complex issue. At the time of this writing, this issue is still under debate. OCRM commends the CRMC for protecting the integrity of the SAMP regulations while seeking to address this complex issue.

During the period covered by this current evaluation, planning has been started for another SAMP. The CRMC began development of the Greenwich Bay SAMP in partnership with the City of Warwick, the Town of East Greenwich, and the Rhode Island DEM to take a comprehensive and unified approach to management of the Greenwich Bay watershed and to address a number of management issues. These included degradation of water quality and associated coastal resources and activities from nonpoint sources of pollution (septic systems, illegal sewer hookups tied directly into storm drains, urban lawn runoff with fertilizers and pesticides, marina and recreational boating activities); use conflicts and impacts from boating operations and necessary dredging; and investigation of non-water dredging/dredged material disposal options.



A key issue leading to the development of the SAMP was the City of Warwick's approval of an expansion to the Greenwich Bay Marina following an approval by the CRMC to authorize the addition of 161 new slips, making the marina the largest in Rhode Island. However, the City was troubled by the inability to consider the cumulative impacts of all the marinas within Greenwich Bay in both its approval and the CRMC's approval of a single marina expansion. The City Council asked the CRMC to develop a SAMP for Greenwich Bay. Greenwich Bay provides shellfish habitat, shoreline access, boating opportunities, scenic views, and historic significance, but pollution from stormwater runoff, failing septic systems, and overdevelopment threatens the water quality necessary to support these uses.

The SAMP process uses an ecosystem-based examination of the resources, evident problems, and the existing institutional network managing the watershed. SAMP policies and regulations are designed to insure the preservation of the vital elements of the ecosystem, to guide future development within the limitations of the land, and to resolve existing problems. The CRMC has the authority to require that allocations of land use consider impacts on the ecosystem and ecosystem 'services' and has direct and comprehensive authority over Greenwich Bay, its shoreline, and associated coastal resources. As part of this authority, the Executive Director in 2000 mandated the Sewer Authority of the City of Warwick to develop a mandatory sewer tie-in program for all drainage areas to Greenwich Bay. This tie-in requirement coincides with the sewer plant upgrades that the Sewer Authority is currently undertaking.

The Greenwich Bay SAMP represents a watershed approach to protecting and restoring the bay's water quality and habitats that support important shellfish and other natural resources. However, the Greenwich Bay SAMP involves a new and different element from the two earlier SAMPs: an overarching theme of the maritime economy that will involve an integrated economic element or policy. Two key elements of a maritime economy exist within the Greenwich Bay SAMP area – boating/marinas and quahogging – and both are affected by a decline in water quality in the Bay. The state is now recognizing the benefits of the maritime economy and that economic "betterment" is based upon the conservation/preservation/improvement of natural resources. Because the state has adopted a watershed approach to environmental management, the Greenwich Bay SAMP will incorporate both watershed management planning and maritime economic policies.

The University of Rhode Island and the Rhode Island Sea Grant Program are players in the partnership developing the Greenwich Bay SAMP, received funding from NOAA through the CRMC to create the SAMP, and are involved in much of the supporting research such as benthic habitat data/mapping in Greenwich Bay. The partners have already started drafting chapters of the SAMP, focusing specific attention on water quality and economic aspects, and will also begin a public outreach campaign with a website connection. Ultimately the SAMP will be adopted into CRMC policies and regulations and the State Guide Plan, which directs the physical, social, and economic development of Rhode Island. The SAMP also becomes part of the local governments' comprehensive plans and municipal harbor management plans, and zoning classifications and decisions must be consistent with the SAMP.

## **6. DEVELOPMENT OF CRMC WEB SITE**

One of the Necessary Actions from the September 2000 Evaluation Findings indicated that “The CRMC must work with the state Legislature and Administration to develop a proposal to obtain state funding to fully apply GIS and Internet-based World Wide Web technologies for program implementation for consideration by the State Legislature by the end of March 2001....” The CRMC now has a fully functional web site (accessible at <http://www.crmc.state.ri.us>) that provides basic information about the history, structure, membership, and organization of the CRMC; upcoming meeting agendas and past meeting agendas; information about projects and initiatives; publications that can be downloaded; contact information; a listing of, and links to, the text of the coastal program’s enabling legislation; and numerous links to other Rhode Island and federal agency web sites. The website includes information about the jurisdiction of the regulatory authority of the CRMC; the text of the Coastal Resources Management Program (the “Red Book”), its management procedures; the federal consistency manual; and the text of all other regulatory and management program elements of the CRMC, including but not limited to SAMPs, freshwater wetland rules and regulations, and guidelines for development of municipal harbor management plans.

The web site also provides permit application forms and a searchable application and permit database. The staff hopes to soon include information about and accessibility to deed restrictions and easements that have been granted by the program and about the public access/right of way sites that have been designated by the CRMC. Making this information accessible to the public, particularly regulatory information, is an important step in communicating the actions and activities of the CRMC to the public and making the processes more transparent and open. The web site, with its current information as well as that which the CRMC staff hopes to add, is a vital element to increase levels of public knowledge, support, and participation for coastal management decision-making and policy development.

That the CRMC accomplished this without a Public Outreach/Education staff position is due only to the dedication and diligence of existing staff. Continued maintenance and updating of the web site is critical for its effectiveness. This will be extremely difficult without a dedicated CRMC staff position for the initiative.

## **7. CONTINUATION OF COASTAL HABITAT RESTORATION PROGRAM**

As discussed in the September 2000 Evaluation Findings, the CRMC has been involved for quite some time in a unified approach to establish a coordinated, coherent program for coastal habitat restoration. The absence of a dedicated source of state funding has remained the primary stumbling block, but the CRMC and staff have maintained a commitment to work with a variety of partners to continue coastal habitat restoration. In particular, the CRMC serves in a day-to-day management role in two ongoing Federal restoration projects: The South Shore Habitat Restoration Project, and Allin’s Cove Habitat Restoration Project.

The South Shore Habitat Restoration Project has as its goal the restoration of once productive but now damaged habitats in the breachway tidal deltas of Ninigret, Cross Mills, Quonochontaug, and Winnapaug Ponds. The project is also intended to help with some of the frontal erosion problems on the South Shore and to slow the growth of the flood tidal deltas that are destroying the deep water habitat. The Final Feasibility Study and Environmental Assessment was completed in June 2002. Restoration involves dredging the breachways and tidal deltas to restore eelgrass, restore salt marsh, and to restore fish passage in the salt pond tributaries leading to two ponds. Currently, CRMC staff is working with private property owners in Charlestown and South Kingstown who will be affected by dredging activities in Ninigret Pond and construction of the fish passage at Cross Mills Pond. Staff has requested that all of the property owners sign a Right of Access Agreement so as to permit the Army Corps of Engineers (and/or the contracting party) to run a pipeline just below the mean high tide line abutting the property. Thus far, property owners have been cooperative. It is expected that construction will begin in the fall of 2003.

In 1959, the U.S. Army Corps of Engineers filled eleven acres of salt marsh in Allin's Cove and some mudflats on the south shore of the cove with dredged material from a nearby navigation project. This affected the velocity and daily tidal exchange of bay water and ultimately resulted in the replacement of salt marsh vegetation by the common reed (*Phragmites australis*) and an increase in erosion of the remaining marsh. This project will ultimately restore the degraded coastal wetlands and habitat with a healthy salt marsh ecosystem by re-grading some of the area to an elevation suitable to encourage and maintain the growth of salt marsh vegetation and potentially restoring some of the open waters that existed prior to the filling, as well as addressing erosion by using excavated material from the fill area to widen and stabilize the eroding coastal shoreline. The CRMC continues to serve as the lead non-federal sponsor and provides a portion of the non-federal funding. This currently is the largest habitat restoration project in the state.

Since the last program evaluation, the Rhode Island Habitat Restoration Portal has "gone live." It is a result of a partnership among the CRMC, Rhode Island DEM Narragansett Bay Estuary Program, and Save The Bay, Inc., working with the Rhode Island Habitat Restoration Team and the University of Rhode Island Environmental Data Center. The project is funded through the NOAA Coastal Services Center. The Portal is a digital source of restoration information, management and educational resources, and spatial data for Rhode Island's coastal habitats. The web site provided data and information about habitat restoration in Rhode Island. The focus is on seagrass, riverine, and salt marsh habitats. The objective is to create an information system that can be used to apply for grants, select potential projects, educate the public, and assist the state in restoration planning. The web site includes an on-line database of almost 200 restoration projects; an internet map server; GIS resources; educational resources; and links to funding resources, permitting information, agency contacts. The Portal is accessible at [www.edc.uri.edu/restoration/](http://www.edc.uri.edu/restoration/). The Portal is already a national model: the Gulf of Maine Council is basing its habitat restoration portal on the Rhode Island example.

Since the evaluation team completed its on-site visit in May, state legislation passed in July 2003 created a Coastal and Estuarine Habitat Restoration Program and Trust Fund, restricted solely to funding habitat restoration projects by amending the state's Oil Spill Prevention Administration and Response Act (OSPAR). As part of the original OSPAR, an oil spill response fund was created through a 5-cent fee on each barrel of petroleum products shipped into the state, along with any civil and criminal fines assessed. Under the law, the fund cannot exceed \$10 million. With the OSPAR amendment, the Coastal and Estuarine Habitat Restoration Trust Fund will receive a legislative appropriation in FY 03 of \$250,000 of the monies generated through the 5-cent tax. The fund is also eligible to accept private donations and federal matching grants.

The money has been made available through a grant application process for projects aimed at improving coastal habitats. These projects have been submitted to an advisory committee charged with evaluating them under a newly developed Statewide Coastal and Estuarine Habitat Restoration Plan and have, in turn, been prioritized to receive funding. A total of eight habitat restoration projects has been allocated funding under the trust fund.

The program, under the direction of the Executive Director of the Coastal Resources Management Council (CRMC), has been introduced again in FY2004 to the General Assembly for a budget request for program costs. All allocations would need final approval of the legislature and the Governor as part of the regular budget process. However, during the last session of the General Assembly, efforts to secure funding for the projects on an annual basis have failed.

## **8. DELINEATION OF MEAN HIGH WATER/WETLAND BOUNDARIES**

During the period covered by this evaluation, Rhode Island's Attorney General argued the case of *Palazzolo v. RI* in the United States Supreme Court. The case stemmed from a lawsuit that Anthony Palazzolo filed against the CRMC, claiming that its regulations deprived him of all economic use of his property. He had sought several permits from the CRMC to fill 18 acres of salt marsh and develop a recreational beach facility. CRMC staff and legal counsel worked extensively with the Attorney General to prepare for the legal proceedings.

One element of the Supreme Court's decision found that the CRMC could look at Palazzolo's entire contiguous land holdings in making its management decisions, i.e., Palazzolo could not claim "taking of property without just compensation" by focusing only on his wetland properties and ignoring the economic viability of developing his contiguous upland properties. In addition, the mean high water mark in Rhode Island is the State's property boundary; thus, an important question is how much of the land is private and how much is public trust land. This is a key issue that was developed during the state's trial on this matter by the Executive Director. It is, therefore, critical that the CRMC have highly accurate delineations of uplands vs. wetlands to determine what area is developable and what is not, as well as to determine the ownership issue. Soon after the decision was announced, the CRMC took action to update its methodology

for determining mean high water to be used for delineating property boundaries. The CRMC sought NOAA's assistance to review its methodology to ensure consistency with the national standards implemented by NOAA. Ultimately, the CRMC will incorporate the methodology into state regulations, and survey the area of the Palazzolo property to determine a precise wetland boundary.

## **V. FINDINGS AND RECOMMENDATIONS**

### **1. CRITICAL CRMC STAFFING NEEDS**

The CRMC staff is extremely dedicated, highly knowledgeable, and very responsive and accessible to citizens and non-profit organizations, the regulated public and industry/trade groups, local governments, and other state and federal agencies. The Executive Director continues his established leadership tradition of strong policy enhancement noted in the September 2000 Evaluation Findings. This is all the more remarkable in light of the program's heavy workload in the regulatory arena. In spite of serious state budget issues that have persisted since the last evaluation (and indeed, are faced by many states), the CRMC staff has been able to maintain a high level of performance, even adding positions as noted in the "Accomplishments" section.

However, a critical position still remains unfilled since the last program evaluation. Creation of a staff position to serve in an outreach and education capacity was noted in a "Program Suggestion" in the 1997 Evaluation Findings. When that was not accomplished by the time of the next program review, that position was elevated to a "Necessary Action" in the 2000 Evaluation Findings. The need remains and has perhaps reached an even greater level of urgency.

The highly regulatory nature of the Rhode Island coastal program does not leave interaction with the CRMC as an option for some people, but rather a requirement. Existing staff has done a yeoman's job of educating those individuals who must inquire about whether they need to obtain a Council assent (permit) about the details of the application process. However, there is also a need to educate these people as well as the general public about the reasons for such regulations. Enforcement action may result from a failure to understand WHY such regulation is needed as much as from a failure to comply with the procedural aspects of the process. With more information and education, public compliance could likely be increased without additional enforcement.

Just as significant is the need to inform and educate citizens about the non-regulatory functions of the coastal program. Coastal management for protection and balanced use involves more than regulation. The CRMC takes the lead or facilitates in a variety of policy issues and non-permitting approaches to coastal management. However, support for the goals and activities undertaken by the CRMC is certainly dependent upon the public at large. With the backing of a large constituent base, requests to the state legislature for funding and other operating mandates have a much greater chance of success. An uninformed public is generally either actively opposed or not supportive of even the best ideas and policies.

Resolution of controversial issues is more likely when accompanied by an informational campaign to present the best available science. The CRMC already has the foundation for this – a highly skilled, technical staff whose integrity is respected. A staff member skilled in media

relations and interactions with interest groups and community leaders is invaluable in building support for the program as a whole, in addition to support for particular issues or policies. Many state coastal management programs have discovered that an outreach and education staff member is extremely helpful in creating an advocacy group of the general public for the program as a whole rather than for single issues. There are missed opportunities to inform and interact with the public without such a position, and such missed opportunities to create a constituency for the program means there are missed opportunities to interact with and influence elected officials, particularly those controlling the state budget.

In addition, having a dedicated outreach and education position allows existing staff members to direct all of their time and energies to their assigned duties. Public outreach tasks that are done well by the existing staff can be handled even better by someone with specialized training and experience. For example, the *Coastal Features* quarterly newsletter is written and edited by various staff members. While they have done an excellent job, that task is not as high a priority as their assigned work load. The CRMC has done an excellent job in building partnerships and coordinating with other agencies and groups to accomplish many activities, but relying on those agencies and groups for ‘publicity’ about those activities and the coastal program is not effective.

The CRMC recognizes the need for a public outreach coordinator and has taken action to secure funding. Through an innovative arrangement with the state’s marine owners, the CRMC reserved space in the CAD cells created by the Providence River dredging project for material dredged from marinas. The marina owners have agreed to pay an increased “tipping fee” to dispose of the material from marina dredging in the cells if the funds were to be used for a CRMC public education coordinator. Despite the projected availability of state funds, the state legislature has not agreed to create the CRMC staff position.

Two other positions within the CRMC have been added since the last program evaluation. A deputy director position was added and has provided an intermediate supervisory level between the executive director and the other supervisors and staff. Most significantly, the deputy director essentially serves as “administrative chief” and oversees permitting issues and the habitat restoration projects, needed positions identified in a Necessary Action in the 2000 Evaluation Findings. This has enabled the executive director to focus more on setting program and major policy direction and less on day-to-day permitting and other issues. A coastal policy analyst position has also been added to the Policy and Planning section of the CRMC. The position actually replaced an existing (and permanent) environmental scientist position. This is a laudable addition in recognition by the CRMC of the growing importance and urgency of its non-regulatory efforts. However, the process of formalizing the positions of deputy director and coastal policy analyst through the state’s personnel and administrative system is incomplete, and neither FTE position is permanent. Both of these positions should be made permanent within the CRMC staff organization.

Failure to address Necessary Actions may result in a future finding of non-adherence and the invoking of interim sanctions, as specified in CZMA Section 312(c). Failure to comply with

the Necessary Actions identified below may result in cooperative agreement special award conditions withholding payment of a certain amount of the total award until the actions identified below have been completed or met.

**NECESSARY ACTION: The CRMC must work with the State Legislature to justify, secure, and fund a career civil service public outreach and education position. This should be completed during the 2004 State legislative session.**

**NECESSARY ACTION: The process to formalize the deputy director and coastal policy analyst positions must be completed and the positions both be made permanent state FTEs (full time equivalent) within the CRMC. This should be completed within one year of the date of this final evaluation findings document.**

## **2. CRMC'S MANAGEMENT PROCEDURES**

To much of the public, the “face” of the coastal management program is the regulatory permitting process. Although approximately 90 percent or more of the necessary Council permits (assents) can be granted at the staff (Executive Director) level, the more significant permit applications must be granted an assent by the Council. These applications exceed a threshold of size or impact or seek exemptions or variances to established thresholds. Council meetings are open to the public and all Council action granting or denying an assent is public information.

According to CRMC's Management Procedures (sections 4 and 5), only applications that are technically sufficient and complete, and which have gone through the required public comment period, are ready for Council review and action. Those applications are then placed on the Council's agenda, a task traditionally done by the Executive Director. During the period since the last evaluation, the Chairman has assumed development of the Council's agenda. This is certainly the Chairman's prerogative (there is nothing in the CRMC Management Procedures addressing who may prepare the agendas); however, neither the administrative requirements of how the Council meetings are conducted, nor the regulations governing how individual projects are reviewed, have changed.

The evaluation team found some inefficiencies and potentially more serious issues related to the Council's Management Procedures. For example, a backlog of applications ready for Council consideration is building. Based on information from staff, at any point in time approximately 15 applications are ready for Council action, while the average number put on the Council agenda is four to six. The applications are not necessarily placed on the agenda in the order that each becomes ready for consideration. Some even have been placed on the agenda for Council action before the public review and comment period had expired, in contradiction of adopted Council procedures (RI CRMC Management Procedures, Section 5.1).



The evaluation team also found that there seemed to be no discernible order by which the Council takes up applications; some long-standing applications had not been addressed for several meetings, while others moved to the top of the consideration list. Not only is this inefficient, it frustrates applicants who are waiting for Council action and makes it difficult for CRMC staff to tell applicants what agenda they will be on. In addition, staff spends considerable time with applicants on the phone trying to explain the scheduling policy. Although there are certainly valid reasons for not considering every application in the strict order in which it becomes ready for Council action (post-hurricane emergency rebuilding, for example), the CRMC Management Procedures should address this issue. The Procedures should dictate how the Council agendas are developed and when the Council may re-arrange the order of applications considered.

The evaluation team realizes that Council members and CRMC staff are in a period of uncertainty due to the gubernatorial election of 2002 and other recent events. The potential state constitutional amendment on “separation of powers” may significantly change the make-up of the Council in the future. In addition, several people whom the evaluation team interviewed spoke of the potential to merge or subsume the CRMC within the Department of Environmental Management (DEM), possibly eliminating the appointed Council altogether. The evaluation team did not hear anyone speak in favor of this proposal and NOAA does not support this idea. NOAA heard the CRMC repeatedly praised for its responsiveness and accessibility to the citizens of Rhode Island, a trait helped by the agency’s relatively small size and its independence.

However, if the Council ignores its own Management Procedures (as in the case of reviewing projects prior to expiration of the public comment period) or violates its own regulations, such actions give ammunition to those in favor of significant change to the current coastal management apparatus in Rhode Island. The evaluation team found that the Council’s reputation for integrity, responsiveness, and accessibility is potentially at serious risk should these types of activities become prevalent.

Failure to address Necessary Actions may result in a future finding of non-adherence and the invoking of interim sanctions, as specified in CZMA Section 312(c). Failure to comply with the Necessary Actions identified below may result in cooperative agreement special award conditions withholding payment of a certain amount of the total award until the actions identified below have been completed or met.

**NECESSARY ACTION: Development of Council meeting agendas and conduct of Council meetings must follow adopted Council procedures as articulated in the “CRMC Management Procedures.” This pertains to the public comment process, the order that the Council hears applications, and other relevant issues. The CRMC Management Procedures must address the order in which the Council hears applications. Within six months of the date of the Final Evaluation Findings CRMC must review the “CRMC Management Procedures” and provide to NOAA a summary of proposed changes needed**

**to meet the intent of this Necessary Action. The CRMC should consult with NOAA before making final changes to the Management Procedures.**

### **3. IMPLEMENTATION OF COASTAL BUFFER ZONE PROGRAM AND REGULATIONS**

A critical issue that the NOAA Office of Ocean and Coastal Resource Management has worked with the Council on for over a year prior to this evaluation is the implementation of the state's coastal buffer program. The coastal buffer regulations require that applicants for new coastal construction or significant alterations to existing structures establish "... a natural area adjacent to a shoreline feature that must be retained in, or restored to, a natural vegetative condition." (Section 150, The State of Rhode Island Coastal Resources Management Program, as amended.) Rhode Island's coastal buffer program is a national model and a good example of "science-based management." The program was created under the auspices of the Coastal Zone Enhancement Grant Program, funded through NOAA. The regulations were written based on a 1994 report on vegetated buffers in the coastal zone compiled by the University of Rhode Island Coastal Resources Center. The buffer program is also a significant element of Rhode Island's federally approved Coastal Nonpoint Pollution Control Program, one of the first programs in the nation to receive federal approval. In short, the buffer program is a critically important part of Rhode Island's coastal management program.

In January 2002 OCRM staff sent the CRMC Executive Director a letter expressing concern about the issue based on some well-publicized cases in Rhode Island newspapers. The letter asked for information on the number of buffer-related assents issued, those that required variances, and those that were issued contrary to staff recommendations. The CRMC response discussed several relevant changes to the buffer program, but did not provide any quantitative data as requested by OCRM.

During the visit, several persons interviewed by the evaluation team indicated that the Council had violated adopted regulations by granting variances to the buffer policies on some assent applications. Not all variances were considered to be violations of the regulations – only those that did not meet the variance standards in the CRMC regulations. Many of these variances were granted contrary to CRMC staff recommendations. This confirmed similar complaints OCRM heard in the months before the evaluation.

Following the site visit and in response to another request for this information, staff provided information indicating that 19 applications went to the Council between 2001 and May 2003 involving buffer issues. Of those 19, the Council ruled against the staff recommendations on 10 applications, or over half. According to the information provided, the staff recommendations on these assents were formulated consistent with Council regulations when, for example, there is enough room on a lot to move all activities so that the buffer requirement can be met; or when there is enough room on the lot to move all activities outside of CRMC jurisdiction. In interviews with the Council Chairman and legal counsel during the site visit,

they indicated that the staff assesses each variance except for the economic aspects, but the Council also assesses each variance, and presumably includes some economic assessment as well. The Council Chairman and legal counsel indicated that staff recommendations are important and they are carefully considered, but ultimately the regulations allow the Council discretion in making permit decisions.

If such discretion is allowed, the parameters by which Council decisions are made should be clarified in the CRMC Management Procedures. Currently the Procedures provide no guidance about what flexibility the Council has in its own assessment or in its decision to differ from staff recommendations. CRMC staff has the reputation for reliability, integrity, and technical expertise. The staff follows adopted policies and regulations in assessing each request for a variance. And, as described in the previous section and previously in this section, a pattern of Council actions contrary to staff advice may bring the integrity and impartiality of the Council into question.

Finally, the CRMC buffer policies are a critical element of Rhode Island's coastal zone management program, as approved by NOAA. Recent actions give the impression that the buffer policies are being changed in a piecemeal fashion without public review or any formal processes. If the Council wishes to change the current buffer policies it must do so according to rulemaking procedures and subsequent submittal of the revised regulations to NOAA for incorporation into the Rhode Island coastal zone management program.

Failure to address Necessary Actions may result in a future finding of non-adherence and the invoking of interim sanctions, as specified in CZMA Section 312(c). Failure to comply with the Necessary Actions identified below may result in cooperative agreement special award conditions withholding payment of a certain amount of the total award until the actions identified below have been completed or met.

**NECESSARY ACTION: Complete applications (including staff reports) for CRMC assents for projects that include coastal buffers must be submitted to the OCRM Coastal Programs Division at the same time they are sent to Council members before each meeting. When the Council issues assents for the projects, the assents themselves or other publicly available documentation should indicate the rationale for specific conditions and actions. The rationale must conform to the CRMC's regulations regarding issuance of variances. CRMC's cooperative agreement semi-annual performance reports on permit activity that are submitted to NOAA must summarize the number of assent applications involving buffer issues and how many of those assents were issued with conditions different than those recommended by staff. It is also suggested that the Council discuss whether it is satisfied with its current vegetated buffer policies and regulations, or whether it wishes to reconsider them.**

**NECESSARY ACTION: In conjunction with the NECESSARY ACTION under "Section 2. CRMC'S MANAGEMENT PROCEDURES," the Council's "Management Procedures"**

should be revised to provide clarity for the public and guidance to Council by specifying the role of staff recommendations in the Council's decision-making process.

**PROGRAM SUGGESTION:** To the extent that staff time is available and working with URI Sea Grant and/or other local experts, Council staff should conduct "training" sessions with individual or small (2-3) groups of Council members to familiarize or refresh them with the regulations that apply to assent applications. The length and content should be devised by staff, but these training sessions should be longer and more detailed than a briefing session. NOAA will assist with this initiative by identifying outside experts or providing other support as necessary.

#### **4. IMPLEMENTATION OF SUBMERGED AQUATIC VEGETATION POLICIES AND REGULATIONS**

The Council has adopted policies and regulations with regard to submerged aquatic vegetation (SAV) and aquatic habitats of particular concern since the last program evaluation. These have been incorporated into and are now a part of the state's approved coastal management program. Section 309 funding was used for the development of the regulations. The SAV species of concern are eelgrass and widgeon grass. The policies and regulations acknowledge the importance of SAV to many species of fish and wildlife for refuge, spawning, food, and attachment. Water quality, light availability, and light intensity reaching the leaves of the grasses are generally considered the most critical factors in healthy SAV habitats. Historical information indicates that eelgrass was once widespread throughout Narragansett Bay; today, eelgrass beds cover less than 100 of the 96,000 acres that comprise Narragansett Bay. The Council's regulations note that many activities under the Council's jurisdiction have the potential to adversely affect SAV and its habitat. Such activities include, but are not limited to, residential, commercial, industrial, and public recreational structures; recreational boating facilities; sewage treatment and stormwater dredging and dredged materials disposal; filling in tidal waters; and even aquaculture.

Maintaining and restoring eelgrass in Narragansett Bay and the South Shore Salt Ponds is a key element of Rhode Island's coastal management program. These evaluation findings highlight Rhode Island's efforts to restore eelgrass habitat through the South Shore Habitat Restoration Project; yet, according to conversations with "Save the Bay," the CRMC's regulatory program may be undermining that effort by allowing eelgrass to be destroyed through individual permit decisions. This occurs when the CRMC's policies on eelgrass are not applied to individual permit decisions. The CRMC should take several actions on this matter: ensure that existing policies regarding eelgrass and other SAV are followed in making permit decisions; reconvene the CRMC's eelgrass subgroup to review existing policies (as recommended by "Save the Bay"); and, based on the recommendations of the subgroup, make appropriate changes to the policies to ensure that these critical habitats are not being destroyed on one hand while being restored (at a much higher financial cost) on the other hand.

**PROGRAM SUGGESTION:** The CRMC should reconvene the subgroup on submerged aquatic vegetation/eelgrass. The subgroup should recommend appropriate policy changes, taking into account the previous work of the subgroup and recommendations made by “Save the Bay.” In addition, the CRMC’s cooperative agreement semi-annual performance reports on permit activity must summarize the number of assent applications involving submerged aquatic vegetation issues, how many included staff recommendations to address the issue, and how many of those assents were issued with conditions different than those recommended by staff.

## **5. SUBMERGED LANDS LEASING PROGRAM**

As is the case in almost all states, submerged lands within some specifically defined coastal or tidal waters are generally not privately owned but are held by the state in trust by the legislature for its citizens. There is often a mechanism, however, to allow the use of submerged lands by individuals or private entities to acknowledge riparian rights or significant public benefits. This is usually accomplished through a lease or license. Such is the case in Rhode Island. Many states also recognize that in allowing private use of public trust lands, the citizens of the state should receive some sort of compensation for the loss of public use of these submerged lands. The CRMC has the authority to lease such public trust submerged lands and the authority to charge submerged lands lease fees for filling in tidal waters. However, the CRMC generally has not charged fees when the filling of leased submerged lands provides public access to tidal waters or shoreline features.

It is highly likely that at some point soon the CRMC will receive an application to lease submerged lands for which no public access is provided. In that case, the citizens of Rhode Island may receive nothing in return for the private use of state-held submerged land and would lose public access to those lands. The CRMC may wish to consider development of specific regulations to establish policy for those cases. It may also wish to develop a fee structure for the leasing of submerged lands. The evaluation team learned that all fees collected by the CRMC for various applications and hearings must be deposited in the state’s general revenue. However, NOAA believes that program income generated by submerged lands leasing should remain with that program. Therefore, if a new submerged lands lease program is developed, fees generated by that program should be deposited in a dedicated account to be used for certain access or restoration activities or other actions to benefit Rhode Island’s coastal resources. The state’s citizens would receive just compensation for the use of their sovereign lands for private gain, and coastal resources would directly benefit.

There could be a significant number of tasks and activities associated with development of such a program, including research into, drafting, and finalizing regulations, in conformance with the CRMC’s and state’s requirements for public workshops; hearings; and other statutory and regulatory procedures. Once the program has been developed, long-term implementation could require annual activities and lease reviews, fiscal reporting, and the development and management of a mechanism to distribute the dedicated funds for whatever appropriate uses

have been identified and established. The development and ongoing implementation of this program could require the addition of an FTE, given the heavy workload of the existing CRMC staff.

**PROGRAM SUGGESTION: The CRMC should work with the Rhode Island Legislature to establish a dedicated account for monies collected through the leasing of submerged lands (as well as other permitting fees), and should then develop regulations, a fee structure, and an implementation plan to address submerged lands leases. The CRMC should also consider its staffing need for the development and implementation of a submerged lands leasing program. NOAA will provide examples of lease programs in other coastal states, as requested.**

## **6. COOPERATIVE AGREEMENT/GRANT REPORTING**

During the two evaluation periods prior to this current evaluation, Necessary Actions were included that dealt with the timeliness and content of the cooperative agreement performance reporting. During the period from June 1992 through September 1996, a Necessary Action required the CRMC to "...submit required performance reports and work products, as well as requests for no-cost extensions, where necessary, on time." The next evaluation findings, covering the period from October 1996 through April 2000, noted significant improvement in on-time submission of performance reports. However, the findings report indicated that no information was included in the performance reports to address progress and the status of activities funded through state match dollars. A Necessary Action required that "... performance reports...must include summary reports of programmatic progress being made to meet coastal management objectives through the use of state matching funds."

Given the increased responsibilities put upon CRMC staff in the past several years, it is understandable why the performance reporting has been delayed. However, at the time of this present evaluation site visit, the CRMC had again fallen behind significantly in the timely submission of performance reports. The most recent performance report received by OCRM from the CRMC covers the reporting period from July 1, 2001 through December 31, 2001. The lack of all performance reports made it difficult for this evaluation team to do much of the routine 'pre-site visit' preparation. More significantly, it is extremely difficult for NOAA/OCRM to gauge compliance with the federal financial awards and for both OCRM and the state to determine how the CRMC is conforming to its NOAA-approved program and meeting the national priorities of the Coastal Zone Management Act.

Failure to address Necessary Actions may result in a future finding of non-adherence and the invoking of interim sanctions, as specified in CZMA Section 312(c). Failure to comply with the Necessary Action identified below may result in cooperative agreement special award conditions withholding payment of a certain amount of the total award until performance reports on that cooperative agreement award have been submitted.

**NECESSARY ACTION:** The CRMC must submit all overdue performance reports within six months of the date of these final evaluation findings. All performance reports, both those currently overdue and future reports, must include summary reports of programmatic progress being made to meet coastal management objectives through the use of state matching funds. Beginning with the first performance report due following the date of issuance of these final evaluation findings, reports must be submitted by the deadlines specified in the performance reporting guidelines attachment provided with each cooperative agreement award or provided by OCRM staff.

## VI. CONCLUSION

Based upon the recent evaluation of the CRMP, I find that the state of Rhode Island is adhering to its approved program and is making satisfactory progress in implementing the provisions of its approved coastal management program. The CRMC has made notable progress in the following areas: (1) leadership and staff support for the Coastal Resources Management Council; (2) coordination and cooperation; (3) ongoing leadership in statewide dredging and disposal planning; (4) efforts and success in aquaculture; (5) continued progress in special area management planning; (6) development of the CRMC web site; (7) continuation of coastal habitat restoration program; and (8) delineation of mean high water/wetland boundaries.

The evaluation team identified the following six areas where the Rhode Island CRMP could be strengthened or improved: (1) critical CRMC staffing needs; (2) CRMC's management procedures; (3) implementation of coastal buffer zone program and regulations; (4) implementation of submerged aquatic vegetation policies and regulations; (5) submerged lands leasing program; and (6) cooperative agreement/grant reporting.

These evaluation findings contain nine recommendations: seven Necessary Actions that are mandatory and two Program Suggestions that should be considered by the CRMC prior to the next §312 evaluation of the program.

This is a programmatic evaluation of the Rhode Island CRMP that may have implications regarding the state's financial assistance awards(s). However, it does not make any judgment about, or replace any financial audit(s) related to, the allowability or allocability of any costs incurred.

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Date

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Eldon Hout, Director  
Office of Ocean and Coastal  
Resource Management



**LIST OF PERSONS CONTACTED**

U.S. Senators

Honorable Lincoln Chafee  
Honorable Jack Reed

U.S. Representatives

Honorable Patrick Kennedy  
Honorable James Langevin

Rhode Island Assembly

Honorable Dennis Algiere, Senate Minority Leader  
Honorable Eileen Naughton, House of Representatives  
Sandra Thornton Whitehouse, House Policy Analyst

Coastal Resources Management Council

Mike Tikoian	Chair, CRMC
Brian Goldman	Legal Counsel, CRMC
Grover Fugate	Executive Director
Jeff Willis	Deputy Director
Dave Alves	Aquaculture Coordinator
Ken Anderson	Supervising Engineer
Kevin Cute	Marine Resource Specialist
Mike Deveau	Engineering Technician
Sean Feeley	Environmental Scientist
Janet Freedman	Coastal Geologist
Dan Goulet	Dredging Coordinator
Brian Harrington	Environmental Scientist
Megan Higgins	Coastal Policy Analyst
Rich Lucia	Principal Civil Engineer
Tom Medeiros	Principal Civil Engineer
Laura Miguel	Senior Environmental Scientist
Tim Motte	Senior Environmental Scientist
Dave Reis	Supervising Environmental Scientist
Amy Silva	Environmental Scientist
Tracy Silvia	Senior Environmental Scientist

Department of Environmental Management

Jan Reitsma, Director  
Russ Chateauneuf, Office of Water Resources  
Ron Gagnon, Chief, Office of Technical and Customer Assistance  
Roger Greene, Manager, Narragansett Bay National Estuarine Research Reserve  
Richard Ribb, Narragansett Bay National Estuarine Research Reserve

Federal Agency Representatives

Bob DeSista, Chief, Permits and Enforcement Branch, New England District, U.S. Army Corps  
of Engineers  
Michael Elliott, New England District, U.S. Army Corps of Engineers  
Michael Ludwig, National Marine Fisheries Service

Local Government Agency Representatives

William DePasquale, Planner, City of Warwick  
Dan Geagan, Planner, City of Warwick

Other Participants

Virginia Lee, Coastal Resources Center, RI Sea Grant, University of Rhode Island  
Topher Hamblett, Director of Advocacy, Save The Bay  
John Torgan, Narragansett BayKeeper, Save The Bay  
Kendra Beaver, Legal Counsel, Save The Bay  
Ken Kubic, President, Rhode Island Marine Trade Association  
Michael Keyworth, Rhode Island Marine Trade Association  
Chris Ruhling, Rhode Island Marine Trade Association  
Don Conradi, Kubic & Conradi Consultants  
Mike McGiveney, President, Rhode Island Shell Fishermen's Association

**PERSONS ATTENDING THE PUBLIC MEETING**

The public meeting was held on Wednesday, May 21, 2003, at 7:00 p.m. in Conference Room B, William A. Powers Building, Department of Administration, One Capitol Hill, Providence, Rhode Island.

Attendees: Wendy Smith, Applied Technology & Management  
Tom Copps, Applied Technology & Management

**WRITTEN COMMENTS RECEIVED AND RESPONSES**

No written comments were received regarding the implementation of the Rhode Island Coastal Resources Management Program during the conduct of this review.

*Date Stamped NOV 25, 2003*

Grover J. Fugate, Executive Director  
Coastal Resources Management Council  
Oliver Stedman Government Center  
4808 Tower Hill Road  
Wakefield, Rhode Island 02879

Dear Mr. Fugate:

Thank you for your October 29, 2003, letter providing comments on the Draft Evaluation Findings for the Coastal Resources Management Council (CRMC). The Office of Ocean and Coastal Resource Management (OCRM) believes that the actions you have identified in response to the Necessary Actions and Program Suggestions will improve CRMC management procedures and policies and help you enhance coastal zone management in Rhode Island. We appreciate the fact that several Council members took the time to review the draft findings and offer detailed responses. We commend the Council members and CRMC staff for proposing these actions.

This letter also serves as an addendum to the Final Evaluation Findings, dated November 14, 2003. This letter clarifies the discussion of CRMC's Management Procedures, described on page 22 of the Final Evaluation Findings and addressed in Section 2 of your October 29, 2003, letter. The information provided in your letter gives OCRM a better understanding of how the CRMC Chairman and Executive Director develop the agendas for CRMC meetings. The process as described in the letter is for the Chairman and Executive Director to meet every two weeks to discuss the list of applications and decide which should be on the agenda in order to "maximize the time of review that is available to the Council." The Final Findings should have made note of this practice, and now do so by virtue of this letter.

However, the Necessary Action calling for the CRMC to review and revise the CRMC Management Procedures remains valid. Your letter states that the CRMC is discussing "more detailed approaches [to setting the agenda] that could further the existing process and meet the intent of this Necessary Action." OCRM agrees with this approach and we stand ready to assist you as needed. OCRM believes that the process used to set CRMC meeting agendas and decide which cases to hear at meetings should be clearly articulated in the Management Procedures and be well known and understood by applicants and the general public. Please note that OCRM's discussion of this issue and the Necessary Action refer to the process to decide which applications to hear at a particular meeting, not to the order that the applications are heard during the meeting.

Thank you once again for your comments on the Draft Evaluation Findings. If you have further questions, please contact me at (301) 713-3155, Extension 200, or Joshua Lott of my staff at (301) 713-3155, Extension 178.

Sincerely,

*Signed: Eldon Hout*

Eldon Hout  
Director

Cc: Michael Tikoian  
Paul Lemont  
David Abedon  
Jerry Sahagian  
Recipients of Final Evaluation Findings (November 14, 2003)